

Group VI: Claims 20-22, drawn to a method for treating cancer, classified in class 435, subclass 7.23; and

Group VII: Claim 23, drawn to a method for treating immunosuppression, classified in class 424, subclass 278.1.

The Examiner contends that the inventions are distinct, each from the other.

Further, the Examiner contends that each of the peptides listed in the claims constitutes an independent and distinct invention, and has required an election of one of the fifteen peptides for prosecution on the merits. Applicants notes that this results in 105 separate restriction groups.

In order to be fully responsive, Applicants hereby elect the invention of Group II, claims 6, 7, 24 and 25, drawn to a method for increasing Th₁ cytokine production, classified in class 424, subclass 278.1. Further, Applicants elect with traverse the peptide Cys Lys Pro Ile Ser Gly His Asn Ser Leu Phe Trp Tyr Arg Gln Thr (SEQ ID NO:1).

With respect to division of the invention into fifteen peptides and the reasons stated therefor, Applicants respectfully traverse and request that the restriction requirement be modified such that the election of the peptide be made an election of species. Attorneys for Applicants do not traverse on the grounds that the peptides are not distinct and separate. Rather, Attorneys for Applicants submit that to search the subject matter of the peptides in the context of the claims of elected Group II would not be a serious burden on the Examiner.

The M.P.E.P. § 803 (Seventh Edition, Rev. 1, July 2000) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

Accordingly, Applicants respectfully request that the Restriction Requirement under 35 U.S.C. § 121 be modified such that the election of the peptide be made a species election. Moreover, Applicants state that if the Examiner agrees with the request herein, that the peptides be subject to a species election, Applicants elect the peptide Cys Lys Pro Ile Ser Gly His Asn Ser Leu Phe Trp Tyr Arg Gln Thr (SEQ ID NO:1), to which the claims shall be restricted if no generic claim is held to be allowable, and note that claims 7, 24 and 25 are generic.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Applicants respectfully request that the above-made remarks be made of record in the file history of the present application.

Respectfully submitted,

Date November 30, 2001

Thomas E. Friebe 29,258
Thomas E. Friebe (Reg. No.)

By:

William Thoman 40,203
William Thoman (Reg. No.)

PENNIE & EDMONDS LLP
1155 Avenue of the Americas
New York, New York 10036-2711
(212) 790-9090